



**New Hampshire's Response to CMS  
Regarding February 2017 Feedback of NH's Systemic Assessment  
May 2017**

**A**

Below please find the state's response to the feedback given regarding the Systemic Assessment submitted to CMS as part of New Hampshire's Statewide Transition Plan.

Please include the following information in the STP for initial approval. The state does not need to submit the STP for public notice after making these technical changes.

**Public Notice**

1. Please confirm that the updated STP and complete attachments were posted on the state's website on February 5, 2016 when the public comment period began (page 139). Please also provide evidence that the public notice was provided in a non-electronic form.

**Response:** The state confirms that it posted its updated and complete attachments on the state's website prior to the notice of public hearings. Notice of the public hearings was posted in two statewide newspapers on February 5, 2016. Please see pages 6 and 7.

**Systemic Assessment**

2. To help inform the state's work, we are attaching examples of two strong state systemic assessments that may be helpful as you continue to refine the STP.

**Response:** Thank you for the information.

3. Please ensure each systemic assessment crosswalk includes the excerpted regulation, policy, licensing or other state standard language that identifies whether the state is compliant, partially compliant, silent or non-compliant with each federal requirement.

**Response:** A crosswalk has been completed identifying compliance, partial compliance, silence or non-compliance for each of the requirements for the three waivers. The crosswalks include remediation steps, as necessary. Specific information can be found in documents C and D.

4. Please ensure each systemic assessment crosswalk is complete and each state standard is labeled with a compliance level (compliant, partially compliant, silent or non-compliant) for each federal requirement.

**Response:** The state has updated its crosswalks to include the requested information.

5. Please ensure all instances of state standards requiring remediation due to silence or non-compliance contains the language the state is planning to use to amend the state standards in order to come into compliance with the federal rule.

**Response:** The state has updated its crosswalks to include the proposed language that will be submitted to New Hampshire's Joint Legislative Committee on Administrative Rules.



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6. The state has indicated in several places in the systemic assessment crosswalks that a legal review will be conducted to determine whether any changes are necessary to comply with the federal requirements. Please note that the results of all legal reviews of state standards against the federal requirements will need to be included in the systemic assessment before the state can receive initial approval.
- a. For example, the state indicates that a legal review of state rule He-P 807 will be conducted to determine whether any changes are necessary to comply with the federal requirement that the setting facilitates individual choice regarding services and supports, and who provides them (Attachment F-2). Please provide the results of this analysis, as well as the remediation language, if needed.

**Response:** In consultation with the DHHS legal team, it was determined that the overarching regulation outlining rights and their protections is He-M 310, Rights of Persons Receiving Developmental Services or Acquired Brain Disorder Services in the Community. The updated crosswalk identifies the remediation steps necessary to ensure full compliance.

7. Please confirm that the state will communicate to provider owned or controlled non-residential settings that the experiences of individuals receiving Medicaid HCBS in these settings must be consistent with those individuals not receiving Medicaid HCBS, for example the same access to food and visitors. Please include this information in each of the systemic assessment crosswalks.

**Response:** Training regarding HCBS expectations include that participants have the same experiences as citizens not receiving Medicaid HCBS regardless of the type of setting. Please see crosswalks for details specific to each waiver.

8. Does the state have any waiver participants residing in foster care settings? If so, were the pertinent state standards related to foster care settings reviewed and/or remediated for compliance with the federal requirements?

**Response:** There are participants in adult foster care settings under the DD, ABD and CFI waivers. The pertinent regulations were reviewed as outlined in Response # 3 and the accompanying crosswalks.

9. Please ensure the state has assessed its state standards correctly against the federal requirement providing for access to food at any time. Please see the below examples:
- b. State rule He-M 1001.06(k) (attachment F-1) is not consistent with the federal requirement as it states that access to food may be restricted if a licensed practitioner deems it necessary and the legal guardian consents to the restriction. Please ensure that any restrictions on access to food are addressed through the person-centered planning process. Please include this information in the systemic assessment.

**Response:** Revisions to He-M 310, Rights of Persons Receiving Developmental Services or Acquired Brain Disorder Services in the Community, have been drafted and will be



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presented to the state's Joint Legislative Committee on Administrative Rules (JLCAR). Revisions include a section specific to modifications and the requirements for those to occur, including documentation in the person-centered plan (Service Agreement).

- c. He-E 801.24 (attachment G-2) is accurately classified as non-compliant. However, the state's proposed amendment to He-E 801.24, does not remedy the non-compliance because it addresses only meals (time, place, location, alternative meal) and does not require the setting to provide access to food at any time. Please ensure individuals can access food at any time. Please explain how this will be remediated in the STP.

**Response:** Revisions to He-E 801, Choices for Independence Program, have been drafted and will be presented to the state's Joint Legislative Committee on Administrative Rules (JLCAR). Revisions include the expectation of food being accessible at any time unless an appropriate modification has been implemented.

- 10. Please ensure the state has assessed its state standards correctly against the federal requirement providing for access to visitors at any time. Please see the below examples:

- d. State rule He-M 310-09(a)(3)c (attachment F-1) is not consistent with the federal requirement because it permits settings to impose "reasonable restrictions on the number and time of visits . . ." Please ensure that the state standards indicate that any restrictions on visitors is handled through the person-centered planning process. Please provide a state standard showing compliance or explain how the state will remediate this issue.

**Response:** Revisions to He-M 310, Rights of Persons Receiving Developmental Services or Acquired Brain Disorder Services in the Community, have been drafted and will be presented to the state's Joint Legislative Committee on Administrative Rules (JLCAR). Revisions include a section specific to modifications and the requirements for those to occur, including documentation in the person-centered plan (Service Agreement). See crosswalk for specific details.

- e. RSA 151:21, XVIII, (Attachment F-2), is not consistent with the federal requirement because it limits visits without restriction to "the patient's parents, if a minor, or spouse, or next of kin, or a personal representative, if an adult, visit the facility, without restriction, if the patient is considered terminally ill by the physician responsible for the patient's care." Please ensure that any restrictions on visitors is handled through the person-centered planning process. Please provide a state standard showing compliance or explain how the state will remediate this issue.

**Response:** Earlier in RSA 151, specifically, RSA 151: 21, XII, it states, *"The patient shall be free to communicate with, associate with, and meet privately with anyone, including family and resident groups, unless to do so would infringe other patients. The patient may send and receive unopened personal mail. The patient has the right to have regular access to the unmonitored use of a telephone."* This section of the law is clear that there are no limits to visits. Section XVIII reinforces this. Through the state's review process, we will ensure that settings have policies and practices that reinforce this expectation.



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Any modifications to visits will be documented in the participant's person-centered plan.

- f. State rule He-E 801.24 (Attachment G-1) is labeled as non-compliant. However, the state's proposed amendment does not remedy the non-compliance because it permits a setting to have a policy that prohibits visitors if they are "infringing on the rights of other residents." Please ensure that any restrictions on visitors are handled through the person-centered planning process. Please explain how the state will remediate this issue.

**Response:** Revisions to He-E 801, Choices for Independence Program, have been drafted and will be presented to the state's Joint Legislative Committee on Administrative Rules (JLCAR). Revisions are identified in the updated crosswalk, including a modification process and use of the person-centered planning document.

11. Please ensure the state has provided the appropriate remediation for the federal requirement ensuring individuals have setting options that include non-disability specific options and the choice of a private unit.

- a. For example, the state's remediation language for this federal requirement in Attachment G-3 does not address this.

**Response:** Revisions to He-E 801, Choices for Independence Program, have been drafted and will be presented to the state's Joint Legislative Committee on Administrative Rules (JLCAR). Revisions are identified in the updated crosswalk.

12. Please ensure the state has provided the appropriate remediation for the federal requirement that settings facilitate individual choice regarding services and who provides them.

- a. For example, the state's remediation language for this federal requirement in Attachment G-3 does not indicate individuals have choice regarding services and who provides them.

**Response:** Revisions to He-E 801, Choices for Independence Program, have been drafted and will be presented to the state's Joint Legislative Committee on Administrative Rules (JLCAR). Revisions are identified in the updated crosswalk.

13. State rule He-E 801.24 (attachment G-1) is listed as non-compliant with the federal requirement that individuals have privacy and access to units with lockable doors, with only appropriate staff having access to the keys. However, the state's proposed amendment does not remedy the non-compliance because it does not require settings to limit the distribution of keys to individuals' rooms to "appropriate staff." Please include this remediation language in the crosswalk. In addition, the proposed amendment conditions the individual's right to a lockable door on consistency with the "New Hampshire fire safety regulations." Please describe why fire safety regulations would impinge on an individual's right to a lockable door.

**Response:** Revisions to He-E 801, Choices for Independence Program, have been drafted and will be presented to the state's Joint Legislative Committee on Administrative Rules (JLCAR). Revisions are identified in the updated crosswalk.



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In a follow up conversation with the state's Office of Legal and Regulatory Services and the state's Fire Marshall's office, it was clarified that there are no fire safety issues that would prevent a participant from having a lockable door as long as the individual is able to evacuate the premises in timely manner in the event of a fire.

14. State rule He-E 813.04(c) (attachment G-1) is non-compliant with the federal requirement that settings ensure an individual's right to privacy, dignity and respect and freedom from coercion and restraint. However, the state's proposed remediation language does not remedy the non-compliance because it does not require an adult family care residence to ensure an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint. Please explain how the state will remediate this in the STP.

**Response:** Revisions to He-E 801, Choices for Independence Program, have been drafted and will be presented to the state's Joint Legislative Committee on Administrative Rules (JLCAR). Revisions are identified in the updated crosswalk.

15. The federal requirement of physical accessibility applies to all provider owned or controlled settings, including non-residential settings. Please clarify where this is included in the state's existing standards, or alternatively please include how the state will address this issue in the STP.

**Response:** Revisions to He-E 801, Choices for Independence Program, have been drafted and will be presented to the state's Joint Legislative Committee on Administrative Rules (JLCAR). Revisions are identified in the updated crosswalk.

16. CMS agrees that state He-M 310.06(a)(4) (attachment F-2) is non-compliant with the federal requirement that settings must facilitate individual choice regarding services and supports and who provides them. However, the State's proposed amendment for the federal requirement includes the phrase "where possible." Please remove this language.

**Response:** New Hampshire was in error when identifying He-M 310.06(a)(4) as the reference for the facilitation of individual choice regarding services and supports and who provides them. He-M 310.06(a)(4), the reference used, speaks to the person-centered planning process and the participant/representative's role. The updated crosswalk identifies that New Hampshire is compliant as outlined in He-M 310.06(a)(11). See the updated crosswalk for further detail.

17. In attachments G-1-5 for the federal requirement that the setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS, the state's remediation language does not sufficiently portray the setting's responsibility to address each of these areas.

**Response:** Revisions to He-E 801, Choices for Independence Program, have been drafted and will be presented to the state's Joint Legislative Committee on Administrative Rules (JLCAR). Revisions are identified in the updated crosswalk.



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18. Please ensure the state has assessed all of the state regulations or other state standards related to assisted living residences and adult day settings for their compliance level with the federal requirements and is reflected in the systemic assessment crosswalks.

**Response:** Revisions to He-E 801, Choices for Independence Program, have been drafted and will be presented to the state's Joint Legislative Committee on Administrative Rules (JLCAR). Revisions are identified in the updated crosswalk.

19. Please number the pages in the attachments.

**Response:** The pages have been numbered.



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Based on the feedback from the Center for Medicaid and Medicare (CMS) regarding New Hampshire's Systemic Assessment, the state's Waiver Transition Team in collaboration with legal counsel from the Department of Health and Human Services (DHHS) developed the following plan to ensure that New Hampshire's regulations comply with the CMS expectations for Home and Community Based Settings (HCBS).

**DD/ABD Waiver:**

Each individual (participant) who receives services under the Developmental Disability or Acquired Brain Disorder waiver is entitled to the rights outlined in He-M 310, Rights of Persons Receiving Developmental Services or Acquired Brain Disorder Services in the Community. This regulation is the "umbrella" under which all services are provided for individuals being supported by the Developmental Services or Acquired Brain Disorder service delivery systems. Regardless of the services that someone is receiving, the rights outlined in He-M 310 are a protection for each participant. Included within this regulation is the HCBS expectations identified by CMS.

Using a new crosswalk format, as requested by CMS, New Hampshire has completed a thorough review of He-M 310, Rights of Persons Receiving Developmental Services or Acquired Brain Disorder Services in the Community to identify where the regulation is compliant, partially compliant, silent or non-compliant with the federal HCBS expectations. Remediation steps have been identified for those areas of the regulation that are not in compliance and they are included in the crosswalk. Within the crosswalk, DHHS has identified proposed language to submit to New Hampshire's Joint Legislative Committee on Administrative Rules, as necessary.

The additional regulations identified in the Statewide Transition Plan are for the certification/licensing process and implementation strategies for that specific service. The regulations that outline these expectations for HCBS settings are:

- He-M 1001, Certification of Community Residences (includes staffed residences and Adult Foster Care settings)
- He-M 525, Participant Directed and Managed Services
- He-M 521, Certification Of Residential Services, Combined Residential and Day Services, or Self-Directed Day Services Provided in The Family Home
- He-M 507, Community Participation Services (Day Services)
- He-P 814, Community Residences At The Residential Care And Supported Residential Care Level
- He-P 807, Rules For Residential Treatment And Rehabilitation Facilities

For each of these regulations New Hampshire will develop language that will strengthen the state's expectations regarding the rights and protections of service recipients.





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**CFI Waiver:**

New Hampshire's He-E 801, Choices for Independence Program is the regulation specific to those services being provided under the Choices for Independence (CFI) waiver. This regulation is the "umbrella" under which all services are provided to participants receiving HCBS under the CFI waiver. Regardless of the service that someone is receiving under the CFI waiver, the expectations of He-E 801 must be met.

Using a new crosswalk format, as requested by CMS, New Hampshire has completed a thorough review of He-E 801, Choices for Independence Program to identify where the regulation is compliant, partially compliant, silent or non-compliant with the federal HCBS expectations. Remediation steps have been identified for those areas of the regulation that are not in compliance and they are included in the crosswalk. Within the crosswalk, DHHS has identified proposed language to submit to New Hampshire's Joint Legislative Committee on Administrative Rules, as necessary.

The additional regulations identified in the CFI portion of the Statewide Transition Plan are for the licensing process and implementation strategies for that specific service. The regulations that outline these expectations for licensing of settings are:

- He-P 818: Adult Day Services
- He-P 813: Adult Family Care Residence (Adult Foster Care settings)
- He-P 804: Assisted Living Residence, Residential Care Services
- He-P 805: Supported Residential Health Care Services

What follows are the crosswalks for He-M 310, Rights of Persons Receiving Developmental Services or Acquired Brain Disorder Services in the Community and He-E 801, Choices for Independence Program. These regulations are the focal point of the state's efforts for HCBS compliance.





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**He-M 310, Rights of Persons Receiving Developmental Services or Acquired Brain Disorder Services in the Community**

[http://www.gencourt.state.nh.us/rules/state\\_agencies/he-m300.html](http://www.gencourt.state.nh.us/rules/state_agencies/he-m300.html)

*HCBS Standard: 42 CFR § 441.301(c)(4): Home and Community–Based Settings. Home and community-based settings must have all of the following qualities, and such other qualities as the Secretary determines to be appropriate, based on the needs of the individual as indicated in their person-centered service plan:*

CMS expectation	Compliant, Partially Compliant, Silent or Non-compliant with federal regulation (including citation and language from regulation as evidence)	Remediation language proposed by DHHS, to be submitted to NH's Joint Legislative Committee on Administrative Rules
(i) The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including	<p><b>Compliant</b> as evidenced by 310.06(a)(7)(c)</p> <p>(a) Individuals shall have the right to adequate and humane service and treatment, including:</p> <p>(7) The right to services in a setting that is:</p> <p style="padding-left: 40px;">c. Integrated in, and supportive of full access of individuals to, the greater community,</p> <p><b>and</b> 310.06(d)</p> <p>(d) Whenever possible, individuals shall be served in generic, integrated settings rather than specialized programs for persons with developmental disabilities or acquired brain disorders.</p>	
1. opportunities to seek employment and work in competitive integrated settings,	<p><b>Compliant</b> as evidenced by 310.06(a)(7)(c)(1)</p> <p>(a) Individuals shall have the right to adequate and humane service and treatment, including:</p> <p>(7) The right to services in a setting that is:</p> <p style="padding-left: 40px;">c. Integrated in, and supportive of full access of individuals to, the greater community, including opportunities to:</p> <p style="padding-left: 80px;">1. Seek employment and work in competitive integrated settings;</p>	



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CMS expectation	Compliant, Partially Compliant, Silent or Non-compliant with federal regulation (including citation and language from regulation as evidence)	Remediation language proposed by DHHS, to be submitted to NH's Joint Legislative Committee on Administrative Rules
2. engage in community life,	<b>Compliant</b> as evidenced by 310.06(a)(7)(c)(2) (a) Individuals shall have the right to adequate and humane service and treatment, including: (7) The right to services in a setting that is: c. Integrated in, and supportive of full access of individuals to, the greater community, including opportunities to: 2. Engage in community life;	
3. control personal resources,	<b>Compliant</b> as evidenced by 310.06(a)(7)(c)(4) (a) Individuals shall have the right to adequate and humane service and treatment, including: (7) The right to services in a setting that is: c. Integrated in, and supportive of full access of individuals to, the greater community, including opportunities to: 4. Control personal resources;	
4. and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.	<b>Compliant</b> as evidenced by 310.06(a)(3)(a) (a) Individuals shall have the right to adequate and humane service and treatment, including: (3) The right to receive services in his or her community: a. To the same degree of access as persons not receiving services;	
(ii) The setting is selected by the individual from among setting options including non-disability specific settings and an option for a private unit in a residential setting.	<b>Compliant</b> as evidenced by 310.06(a)(7)(b) & 7(c)(6) (a) Individuals shall have the right to adequate and humane service and treatment, including: (7) The right to services in a setting that is:	



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CMS expectation	Compliant, Partially Compliant, Silent or Non-compliant with federal regulation (including citation and language from regulation as evidence)	Remediation language proposed by DHHS, to be submitted to NH's Joint Legislative Committee on Administrative Rules
	<p>b. Chosen by the individual or his or her representative from among options that are identified in the service agreement and include non-disability specific settings;</p> <p>(7) The right to services in a setting that is:</p> <p>c. Integrated in, and supportive of full access of individuals to, the greater community, including opportunities to:</p> <p>6. Live in a private unit in a residential setting, based on the resources available for room and board;</p>	
The setting options are identified and documented in the person-centered service plan	<p><b>Compliant</b> as evidenced by 310.06(a)(4)(m)</p> <p>(a) Individuals shall have the right to adequate and humane service and treatment, including:</p> <p>(4) The right to a person-centered planning process that:</p> <p>m. Records the alternative home and community based settings that were considered by the individual;</p>	
and are based on the individual's needs, preferences	<p><b>Compliant</b> as evidenced by 310.06(a)(7)(a)</p> <p>(a) Individuals shall have the right to adequate and humane service and treatment, including:</p> <p>(7) The right to services in a setting that is:</p> <p>a. Based on the individual's needs and preferences;</p>	
and, for residential settings, resources available for room and board.	<p><b>Compliant</b> as evidenced by 310.06(a)(7)(c)(6)</p> <p>(a) Individuals shall have the right to adequate and humane service and treatment, including:</p> <p>(7) The right to services in a setting that is:</p>	



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CMS expectation	Compliant, Partially Compliant, Silent or Non-compliant with federal regulation (including citation and language from regulation as evidence)	Remediation language proposed by DHHS, to be submitted to NH's Joint Legislative Committee on Administrative Rules
	<p>c. Integrated in, and supportive of full access of individuals to, the greater community, including opportunities to:</p> <p>6. Live in a private unit in a residential setting, based on the resources available for room and board;</p>	
(iii) Ensures an individual's rights of 1. privacy,	<p><b>Compliant</b> as evidenced by 310.05(c) (c) Individuals shall have the right to privacy.</p>	
2. dignity and respect,	<p><b>Compliant</b> as evidenced by 310.05(a) (a) Persons who are applicants for services or individuals who are receiving services from provider agencies shall be treated with dignity and respect at all times.</p>	
3. and freedom from coercion	<p><b>Compliant</b> as evidenced by 310.05(d) (d) Individuals shall have the right to be free from coercion.</p>	
and restraint.	<p><b>Currently the regulation has a modification process for residential services only, and this right is identified in the Service Rights section, so the regulation is Partially Compliant</b> as evidenced by 310.06(a)(17)(a-b)</p> <p>(a) Individuals shall have the right to adequate and humane service and treatment, including:</p> <p>(17) The right to freedom from restraint including:</p>	<p><b>Remediation:</b> NH will revise <u>He-M 310, Rights of Persons Receiving Developmental Services or Acquired Brain Disorder Services in the Community</u> to include a modification section for all services provided, that outlines the CMS criteria for when an expectation is modified.</p>



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CMS expectation	Compliant, Partially Compliant, Silent or Non-compliant with federal regulation (including citation and language from regulation as evidence)	Remediation language proposed by DHHS, to be submitted to NH's Joint Legislative Committee on Administrative Rules
	<p>a. For individuals under the age of 18, the right to limitations on the use of restraint pursuant to RSA 126-U; and</p> <p>b. The right to be free from seclusion and physical, mechanical or pharmacological restraint except that in cases of emergency such as the occurrence or serious threat of extreme violence, personal injury, or attempted suicide where no less restrictive alternative would be effective:</p> <ol style="list-style-type: none"> <li>1. Such means of restraint as are authorized by a prescribing practitioner and approved by a human rights committee pursuant to RSA 171-A:17, II(c), may be used as part of a treatment plan to which the individual or individual's guardian or representative, if any, has consented, having made an informed decision to do so; and</li> <li>2. The minimum necessary degree of restraint may also be used:               <ol style="list-style-type: none"> <li>(i) In an emergency to prevent harm to the individual or others or prevent substantial damage to property;</li> <li>(ii) As part of a behavior change program that limits an individual's rights and is approved by a human rights committee pursuant to RSA 171-A:17, II, (c); or</li> <li>(iii) When the person is involuntarily admitted in</li> </ol> </li> </ol>	



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CMS expectation	Compliant, Partially Compliant, Silent or Non-compliant with federal regulation (including citation and language from regulation as evidence)	Remediation language proposed by DHHS, to be submitted to NH's Joint Legislative Committee on Administrative Rules
	accordance with RSA 171-B.	
(iv) Optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities,	<p><b>Compliant</b> as evidenced by 310.06(a), (7)(a), (c)(3) and (12)(a-b)</p> <p>(a) Individuals shall have the right to adequate and humane service and treatment, including:</p> <p>(7) The right to services in a setting that is:</p> <ul style="list-style-type: none"> <li>a. Based on the individual's needs and preferences;</li> <li>c. Integrated in, and supportive of full access of individuals to, the greater community, including opportunities to: <ul style="list-style-type: none"> <li>3. Control schedules and activities;</li> </ul> </li> </ul> <p>(12) The right to services which promote independence including services which shall be directed toward:</p> <ul style="list-style-type: none"> <li>a. Eliminating or reducing the individual's need for continued services; and</li> <li>b. Promoting the ability of the individuals to function at their highest capacity and as independently as possible;</li> </ul>	
physical environment, and	<p><b>Compliant</b> as evidenced by 310.06(a)(7)(b)</p> <p>(a) Individuals shall have the right to adequate and humane service and treatment, including:</p> <p>(7) The right to services in a setting that is:</p> <ul style="list-style-type: none"> <li>b. Chosen by the individual or his or her</li> </ul>	



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CMS expectation	Compliant, Partially Compliant, Silent or Non-compliant with federal regulation (including citation and language from regulation as evidence)	Remediation language proposed by DHHS, to be submitted to NH's Joint Legislative Committee on Administrative Rules
	representative from among options that are	
	identified in the service agreement and include non-disability specific settings;	
with whom to interact.	<b>Currently, this expectation is identified for residential services only. The regulation is Silent for non-residential settings.</b>	<b>Remediation:</b> He-M 310 will be revised to include this requirement under <u>He-M 310.05, Personal Rights</u> to ensure that it applies to both non-residential and residential settings.
	<b>Currently this expectation does not include a modification process for limits on access to telephones, and having visitors. The regulation is Partially Compliant for residential settings as evidenced by 310.09(a)(3)(a-d):</b>	
	<p>(a) In addition to the foregoing rights, individuals living in community residences shall also have the following rights:</p> <p>(3) The right to freely and privately communicate with others, including:</p> <p>a. The right to send and receive unopened and uncensored written and electronic correspondence;</p> <p>b. The right to have reasonable access to telephones and to be allowed to make and to receive telephone calls except that community residences may require an individual to reimburse them for the cost of any long distance calls made by the individual;</p>	<b>Remediation:</b> Any limits to the expectation of access to phone would be included in a participant's person centered planning (Service Agreement)





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CMS expectation	Compliant, Partially Compliant, Silent or Non-compliant with federal regulation (including citation and language from regulation as evidence)	Remediation language proposed by DHHS, to be submitted to NH's Joint Legislative Committee on Administrative Rules
		document and would follow the modification expectations.
	c. The right to receive and to refuse to receive visitors except that community residences may impose reasonable restrictions on the number and time of visits in order to ensure effective provision of services except that community residences may impose reasonable restrictions on the number and time of visits in order to ensure effective provision of services; and	<b>Remediation:</b> Any modifications to the expectation of having visitors would be included in a participant's person centered planning (Service Agreement) document.
	d. The right to engage in social, recreational, and religious activities including the provision of regular opportunities for individuals to engage in such activities;	
(v) Facilitates individual choice regarding services and supports, and who provides them.	<b>Compliant</b> as evidenced by 310.06(a)(11) (a) Individuals shall have the right to adequate and humane service and treatment, including: (11) The right to voluntary participation in services, as decided by the individual or his or her representative, including the right to seek changes in services or provider agency at any time or to withdraw from any form of service or from a provider agency, unless the person is involuntarily admitted in accordance with RSA 171-B;	



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In a provider-owned or controlled residential setting, in addition to the qualities at §441.301(c)(4)(i) through (v), the following additional conditions must be met:

<b>CMS expectation</b>	<b>Compliant, Partially Compliant, Silent or Non-compliant with federal regulation (including citation and language from regulation as evidence)</b>	<b>Remediation language proposed by DHHS, to be submitted to NH's Joint Legislative Committee on Administrative Rules</b>
(A) The unit or dwelling is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity. For settings in which landlord tenant laws do not apply, the State must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS participant, and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law.	<b>Currently the regulation does not include any language regarding a lease or tenancy agreement so the regulation is Silent</b>	<b>Remediation:</b> Develop a lease or residency agreement for HCBS participants that meets the CMS requirements.
(B) Each individual has privacy in their sleeping or living unit:	<b>Compliant</b> as evidenced by 310.09(a)(4): (a) In addition to the foregoing rights, individuals living in community residences shall also have the following rights: (4) The right to privacy in the individual's sleeping or living unit	
(1) Units have entrance doors lockable	<b>Compliant</b> as evidenced by 310.09(a)(4)(b):	



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CMS expectation	Compliant, Partially Compliant, Silent or Non-compliant with federal regulation (including citation and language from regulation as evidence)	Remediation language proposed by DHHS, to be submitted to NH's Joint Legislative Committee on Administrative Rules
by the individual, with only appropriate staff having keys to doors.	(a) In addition to the foregoing rights, individuals living in community residences shall also have the following rights:	
	(4) The right to privacy in the individual's sleeping or living unit, including the following: b. The right to entrance doors lockable by the individual with only appropriate staff having keys to doors;	
(2) Individuals sharing units have a choice of roommates in that setting	<b>Compliant</b> as evidenced by 310.09(a)(5)(f) (a) In addition to the foregoing rights, individuals living in community residences shall also have the following rights: (5) The right to individual choice, including the following: f. The right to choose one's roommate when bedrooms are shared;	
(3) Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement	<b>Compliant</b> as evidenced by 310.09(a)(5)(g) (a) In addition to the foregoing rights, individuals living in community residences shall also have the following rights: (5) The right to individual choice, including the following: g. The right to furnish and decorate one's sleeping or living unit within the limits of the lease or other agreement;	
(C) Individuals have the freedom and support to control their own schedules and activities, and have access to food at any time.	<b>Compliant</b> as evidenced by 310.09(a)(5)(h) (a) In addition to the foregoing rights, individuals living in community residences shall also have the following rights: (5) The right to individual choice, including the following: h. The freedom and support to control one's own activities and schedules, and to access food at any time;	



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CMS expectation	Compliant, Partially Compliant, Silent or Non-compliant with federal regulation (including citation and language from regulation as evidence)	Remediation language proposed by DHHS, to be submitted to NH's Joint Legislative Committee on Administrative Rules
(D) Individuals are able to have visitors of their choosing at any time.	<b>Compliant</b> as evidenced by 310.09(a)(4)(c) (a) In addition to the foregoing rights, individuals living in community residences shall also have the following rights: (4) The right to privacy in the individual's sleeping or living unit, including the following: c. The right to receive visitors of one's choosing at any time;	
(E) The setting is physically accessible to the individual	<b>Compliant</b> as evidenced by 310.09(a)(2) (a) In addition to the foregoing rights, individuals living in community residences shall also have the following rights: (2) The right to settings that are physically accessible to the individual;	
(F) Any modification of the additional conditions, under §441.301(c)(4)(vi)(A) through (D), must be supported by a specific assessed need and justified in the person-centered service plan. The following requirements must be documented in the person-centered service plan:	<b>Compliant</b> as evidenced by 310.09(h)(i)(1-6) (h) Any modification to (a) (4) or (5) above shall be supported by a specific assessed need and documentation described in (i) below.  (i) A provider agency shall only make modifications pursuant to (h) above by documenting in the service agreement the following:	
(1) Identify a specific and individualized assessed need.	(1) The specific and individualized assessed need and a description of the condition that is directly proportionate to the need;	



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<b>CMS expectation</b>	<b>Compliant, Partially Compliant, Silent or Non-compliant with federal regulation (including citation and language from regulation as evidence)</b>	<b>Remediation language proposed by DHHS, to be submitted to NH's Joint Legislative Committee on Administrative Rules</b>
(2) Document the positive interventions and supports used prior to any modifications to the person-centered service plan.	(2) Positive interventions and supports used prior to any modification to the service agreement;	
(3) Document less intrusive methods of meeting the need that have been tried but did not work.	(3) Less intrusive methods of meeting the need that have been tried unsuccessfully;	
(4) Include a clear description of the condition that is directly proportionate to the specific assessed need.	(1) The specific and individualized assessed need and a description of the condition that is directly proportionate to the need;	
(5) Include regular collection and review of data to measure the ongoing effectiveness of the modification.  (6) Include established time limits for periodic reviews to determine if the modification is still necessary or can be terminated.	(4) A method for the regular collection and review of data to measure the ongoing effectiveness of the modification, and established timelines for periodic reviews to determine whether the modification is still necessary or can be terminated;	
(7) Include the informed consent of the individual.	(5) Informed consent of the individual, guardian, or representative; and	
(8) Include an assurance that interventions and supports will cause no harm to the individual.	(6) An assurance that the interventions and supports will not cause harm to the individual.	



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**He-E 801, Choices for Independence Program**

[http://www.gencourt.state.nh.us/rules/state\\_agencies/he-e800.html](http://www.gencourt.state.nh.us/rules/state_agencies/he-e800.html)

*HCBS Standard: 42 CFR § 441.301(c)(4): Home and Community–Based Settings. Home and community-based settings must have all of the following qualities, and such other qualities as the Secretary determines to be appropriate, based on the needs of the individual as indicated in their person-centered service plan:*

<b>CMS expectation</b>	<b>Compliant, Partially Compliant, Silent or Non-compliant with federal regulation (including citation and language from regulation as evidence)</b>	<b>Remediation language proposed by DHHS, to be submitted to NH's Joint Legislative Committee on Administrative Rules</b>
(i) The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including	<b>Silent</b>	<b>Remediation:</b> New Hampshire will revise <u>He-E 801, Choices for Independence Program</u> to read "Participants will be offered the choice of settings, including settings that are integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS."
1. opportunities to seek employment and work in competitive integrated settings,	<b>Silent</b>	See above
2. engage in community life,	<b>Silent</b>	See above
3. control personal resources,	<b>Silent</b>	See above
4. and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.	<b>Silent</b>	See above



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CMS expectation	Compliant, Partially Compliant, Silent or Non-compliant with federal regulation (including citation and language from regulation as evidence)	Remediation language proposed by DHHS, to be submitted to NH's Joint Legislative Committee on Administrative Rules
(ii) The setting is selected by the individual from among setting options including non-disability specific settings and an option for a private unit in a residential setting.	<b>Silent</b>	<b>Remediation:</b> New Hampshire will revise <u>He-E 801, Choices for Independence Program</u> to read "Participants will select settings from options including non-disability specific settings and an option for a private unit in a residential setting."
The setting options are identified and documented in the person-centered service plan	<b>Silent</b>	<b>Remediation:</b> New Hampshire will revise <u>He-E 801, Choices for Independence Program</u> to read "setting options will be identified and documented in the person-centered service plan and will be based on the individual's needs and preferences, and for residential settings, resources available for room and board."
and are based on the individual's needs, preferences	<b>Silent</b>	See above
and, for residential settings, resources available for room and board.	<b>Silent</b>	See above
(iii) Ensures an individual's rights of 1. privacy,	<b>Silent</b>	<b>Remediation:</b> New Hampshire will revise <u>He-E 801, Choices for Independence Program</u> to read "all settings will ensure the individual's rights of privacy, dignity and respect, and freedom from coercion and restraint."
2. dignity and respect,	<b>Silent</b>	See above
3. and freedom from coercion	<b>Silent</b>	See above
and restraint.	<b>Silent</b>	See above





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CMS expectation	Compliant, Partially Compliant, Silent or Non-compliant with federal regulation (including citation and language from regulation as evidence)	Remediation language proposed by DHHS, to be submitted to NH's Joint Legislative Committee on Administrative Rules
(iv) Optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities,	<b>Silent</b>	<b>Remediation:</b> New Hampshire will revise <u>He-E 801, Choices for Independence Program</u> to read "optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact."
physical environment, and	<b>Silent</b>	See above
with whom to interact.	<b>Silent</b>	See above
(v) Facilitates individual choice regarding services and supports, and who provides them.	<b>Silent</b>	<b>Remediation:</b> New Hampshire will revise <u>He-E 801, Choices for Independence Program</u> to read "facilitates individual choice regarding services and supports, and who provides them."



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In a provider-owned or controlled residential setting, in addition to the qualities at §441.301(c)(4)(i) through (v), the following additional conditions must be met:

<b>CMS expectation</b>	<b>Compliant, Partially Compliant, Silent or Non-compliant with federal regulation (including citation and language from regulation as evidence)</b>	<b>Remediation language proposed by DHHS, to be submitted to NH's Joint Legislative Committee on Administrative Rules</b>
(A) The unit or dwelling is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity. For settings in which landlord tenant laws do not apply, the State must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS participant, and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law.	<b>Silent</b>	<b>Remediation:</b> New Hampshire will revise <u>He-E 801, Choices for Independence Program</u> to read "The unit or dwelling is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity. For settings in which landlord tenant laws do not apply, the State must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS participant, and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law."
(B) Each individual has privacy in their sleeping or living unit:	<b>Silent</b>	<b>Remediation:</b> New Hampshire will revise <u>He-E 801, Choices for Independence Program</u> to read "Each individual has privacy in their sleeping or living unit: Units have entrance doors lockable by



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CMS expectation	Compliant, Partially Compliant, Silent or Non-compliant with federal regulation (including citation and language from regulation as evidence)	Remediation language proposed by DHHS, to be submitted to NH's Joint Legislative Committee on Administrative Rules
		the individual, with only appropriate staff having keys to doors. Individuals sharing units have a choice of roommates in that setting. Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement."
(1) Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors.	<b>Silent</b>	See above
(2) Individuals sharing units have a choice of roommates in that setting	<b>Silent</b>	See above
(3) Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement	<b>Silent</b>	See above
(C) Individuals have the freedom and support to control their own schedules and activities, and have access to food at any time.	<b>Silent</b>	<b>Remediation:</b> New Hampshire will revise <u>He-E 801, Choices for Independence Program</u> to read "individuals have the freedom and support to control their own schedules and activities, and have access to food at any time."
(D) Individuals are able to have visitors of their choosing at any time.	<b>Silent</b>	<b>Remediation:</b> New Hampshire will revise <u>He-E 801, Choices for Independence Program</u> to read "individuals are able to have visitors of their choosing at any time."
(E) The setting is physically accessible to the individual	<b>Silent</b>	<b>Remediation:</b> New Hampshire will revise <u>He-E 801, Choices for Independence Program</u> to read "the setting is physically accessible to the



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CMS expectation	Compliant, Partially Compliant, Silent or Non-compliant with federal regulation (including citation and language from regulation as evidence)	Remediation language proposed by DHHS, to be submitted to NH's Joint Legislative Committee on Administrative Rules
<p>(F) Any modification of the additional conditions, under §441.301(c)(4)(vi)(A) through (D), must be supported by a specific assessed need and justified in the person-centered service plan. The following requirements must be documented in the person-centered service plan:</p>	<p><b>Silent</b></p>	<p>individual.”</p> <p><b>Remediation:</b> New Hampshire will revise <u>He-E 801, Choices for Independence Program</u> to read “Any modification of the additional conditions, under §441.301(c)(4)(vi)(A) through (D), must be supported by a specific assessed need and justified in the person-centered service plan. The following requirements must be documented in the person-centered service plan:</p> <ul style="list-style-type: none"> <li>(1) Identify a specific and individualized assessed need.</li> <li>(2) Document the positive interventions and supports used prior to any modifications to the person-centered service plan.</li> <li>(3) Document less intrusive methods of meeting the need that have been tried but did not work.</li> <li>(4) Include a clear description of the condition that is directly proportionate to the specific assessed need.</li> <li>(5) Include regular collection and review of data to measure the ongoing effectiveness of the modification.</li> <li>(6) Include established time limits for periodic reviews to determine if the modification is still necessary or can be terminated.</li> </ul>



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CMS expectation	Compliant, Partially Compliant, Silent or Non-compliant with federal regulation (including citation and language from regulation as evidence)	Remediation language proposed by DHHS, to be submitted to NH's Joint Legislative Committee on Administrative Rules
		(7) Include the informed consent of the individual. (8) Include an assurance that interventions and supports will cause no harm to the individual."
(1) Identify a specific and individualized assessed need.	<b>Silent</b>	See above
(2) Document the positive interventions and supports used prior to any modifications to the person-centered service plan.	<b>Silent</b>	See above
(3) Document less intrusive methods of meeting the need that have been tried but did not work.	<b>Silent</b>	See above
(4) Include a clear description of the condition that is directly proportionate to the specific assessed need.	<b>Silent</b>	See above
(5) Include regular collection and review of data to measure the ongoing effectiveness of the modification.	<b>Silent</b>	See above
(6) Include established time limits for periodic reviews to determine if the modification is still necessary or can be terminated.	<b>Silent</b>	See above



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CMS expectation	Compliant, Partially Compliant, Silent or Non-compliant with federal regulation (including citation and language from regulation as evidence)	Remediation language proposed by DHHS, to be submitted to NH's Joint Legislative Committee on Administrative Rules
(7) Include the informed consent of the individual.	<b>Silent</b>	See above
(8) Include an assurance that interventions and supports will cause no harm to the individual.	<b>Silent</b>	See above